

## DOMESTIC VIOLENCE REVISIONS

### 78B-7-102. Definitions.

As used in this chapter:

- (1) "Abuse" means intentionally or knowingly causing or attempting to cause a cohabitant physical harm or intentionally or knowingly placing a cohabitant in reasonable fear of imminent physical harm.
- (2) "Cohabitant" means an emancipated person pursuant to Section 15-2-1 or a person who is 16 years of age or older who:
  - (a) is or was a spouse of the other party;
  - (b) is or was living as if a spouse of the other party;
  - (c) is related by blood or marriage to the other party; or
  - (d) has or had one or more children in common with the other party;
  - (e) is the biological parent of the other party's unborn child; or
  - (f) resides or has resided in the same residence as the other party.
- (3) Notwithstanding Subsection (2), "cohabitant" does not include:
  - (a) the relationship of natural parent, adoptive parent, or step-parent to a minor; or
  - (b) the relationship between natural, adoptive, step, or foster siblings who are under 18 years of age.
- (4) "Court clerk" means a district court clerk.
- (5) "Domestic violence" means the same as that term is defined in Section 77-36-1.
- (6) "Ex parte protective order" means an order issued without notice to the defendant in accordance with this chapter.
- (7) "Foreign protection order" is as defined in Section 78B-7-302.
- (8) **"Intimate partner" means**
  - (a) **a current or former spouse of the victim;**
  - (b) **a person with whom the victim shares a child in common;**
  - (c) **a person who resides or has resided with the victim in a romantic, dating or sexual relationship.**
- ~~(8)~~(9) "Law enforcement unit" or "law enforcement agency" means any public agency having general police power and charged with making arrests in connection with enforcement of the criminal statutes and ordinances of this state or any political subdivision.
- (9) "Peace officer" means those persons specified in Title 53, Chapter 13, Peace Officer Classifications.
- (10) "Protective order" means an order issued pursuant to this chapter subsequent to a hearing on the petition, of which the petitioner and respondent have been given notice in accordance with this chapter.

### 77-20-1 Right to bail -- Denial of bail -- Hearing.

- (1) A person charged with or arrested for a criminal offense shall be admitted to bail as a matter of right, except if the person is charged with a:
  - (a) capital felony, when the court finds there is substantial evidence to support the charge;
  - (b) **felony committed while for which the court finds there is substantial evidence to support the charge, and:**
    - (i) **the offense is alleged to have occurred while the defendant or arrestee is on probation or parole, or while free on bail awaiting trial on a previous felony charge; or, when the court finds there is substantial evidence to support the current felony charge;**
    - (ii) **the new arrest or charge is alleged to have been committed against an intimate partner and the defendant or arrestee has been arrested for a domestic violence felony within the prior thirty days.**
  - (c) **felony domestic violence;**
  - (d) felony when there is substantial evidence to support the charge and the court finds by clear and convincing evidence that the person would constitute a substantial danger to any other person or to the community, or is likely to flee the jurisdiction of the court, if released on bail;
  - ~~or~~
  - (e) felony when the court finds there is substantial evidence to support the charge and it finds by

clear and convincing evidence that the person violated a material condition of release while previously on bail; or

**(f) a misdemeanor domestic violence offense alleged to have been committed against an intimate partner as defined in 77-36-1, if the court finds by clear and convincing evidence that the arrestee or defendant would constitute a substantial danger to the victim if released on bail.**

(2) Any person who may be admitted to bail may be released either on the person's own recognizance or upon posting bail, on condition that the person appear in court for future court proceedings in the case, and on any other conditions imposed in the discretion of the magistrate or court that will reasonably:

- (a) ensure the appearance of the accused;
- (b) ensure the integrity of the court process;
- (c) prevent direct or indirect contact with witnesses or victims by the accused, if appropriate; and
- (d) ensure the safety of the public.

(3)

(a) Except as otherwise provided, the initial order denying or fixing the amount of bail shall be issued by the magistrate or court issuing the warrant of arrest.

(b) A magistrate may set bail upon determining that there was probable cause for a warrantless arrest.

(c) A bail commissioner may set bail in a misdemeanor case in accordance with Sections 10-3-920 and 17-32-1.

(d) A person arrested for a violation of a jail release agreement or jail release order issued pursuant to Section 77-36-2.5:

- (i) may not be released before the accused's first judicial appearance; and
- (ii) may be denied bail by the court under Subsection 77-36-2.5(8) or (12).

(4) The magistrate or court may rely upon information contained in:

- (a) the indictment or information;
- (b) any sworn probable cause statement;
- (c) information provided by any pretrial services agency; or
- (d) any other reliable record or source.

(5)

(a) A motion to modify the initial order may be made by a party at any time upon notice to the opposing party sufficient to permit the opposing party to prepare for hearing and to permit any victim to be notified and be present.

(b) Hearing on a motion to modify may be held in conjunction with a preliminary hearing or any other pretrial hearing.

(c) The magistrate or court may rely on information as provided in Subsection (4) and may base its ruling on evidence provided at the hearing so long as each party is provided an opportunity to present additional evidence or information relevant to bail.

(6) Subsequent motions to modify bail orders may be made only upon a showing that there has been a material change in circumstances.

(7) An appeal may be taken from an order of any court denying bail to the Supreme Court, which shall review the determination under Subsection (1).

(8) For purposes of this section, any arrest or charge for a violation of Section 76-5-202, Aggravated murder, is a capital felony unless:

- (a) the prosecutor files a notice of intent to not seek the death penalty; or
- (b) the time for filing a notice to seek the death penalty has expired and the prosecutor has not filed a notice to seek the death penalty.

#### **77-36-2.5. Conditions for release after arrest for domestic violence -- Jail release agreements -- Jail release court orders.**

(1)

(a) Upon arrest for domestic violence, and before the person is released on bail, recognizance, or otherwise, the person may not personally contact the alleged victim of domestic violence.

(b) A person who violates Subsection (1)(a) is guilty of a class B misdemeanor.

(2)

**(a) Upon After an arrest for a domestic violence offense alleged to have been committed against an intimate partner, a person may not be released before the matter is submitted to a magistrate as provided in 77-7-23.**

~~on bail, recognizance, or otherwise prior to the close of the next court day following the arrest, unless as a condition of that release the person is ordered by the court or agrees in writing that until further order of the court, the person will:~~

**(b) Upon presentment, if the magistrate determines there is probable cause to support the charge or charges of domestic violence against an intimate partner, the magistrate shall:**

**(i) determine if grounds exist to hold the defendant without bail pursuant to 77-20-1;**

**(ii) if there are not, what if any release conditions, including electronic monitoring are necessary to protect the victim;**

**(iii) what, if any, monetary bail is required to guarantee the defendant's appearance at subsequent court appointments.**

**(c) The magistrate may only consider release before the close of the first court day after arrest, if:**

**(i) the person agrees in writing to the conditions in subsection (d);**

**(ii) or the magistrate orders such conditions.**

**(d) The conditions for release before the close of the first court day are that the person will:**

**(i) have no personal contact with the alleged victim;**

**(ii) not threaten or harass the alleged victim;**

**(iii) not knowingly enter onto the premises of the alleged victim's residence or any premises temporarily occupied by the alleged victim;**

**(iv) until the arrestee personally appears before the court with jurisdiction over the offense for which the defendant was arrested. That appearance shall be scheduled by the magistrate and may be no more than 96 hours from the time of arrest.**

~~(a) have no personal contact with the alleged victim;~~

~~(b) not threaten or harass the alleged victim; and~~

~~(c) not knowingly enter onto the premises of the alleged victim's residence or any premises temporarily occupied by the alleged victim.~~

**(3) Such appearance may be by video if the arrested person is not released.**

**(4) If at the time scheduled by the magistrate to appear:**

**(a) charges have been filed and the defendant fails to appear, the jail release agreement or order shall continue in effect until the defendant's initial appearance;**

**(b) charges have not been filed and the defendant is present in court, the court upon the motion of the prosecutor, and allowing for response from the defendant, may extend the jail release agreement or order by no more than three court days, and order the person to appear then.**

~~(3)~~

**(5)(a) Unless extended as provided above, the jail release agreement or jail release court order expires at midnight on the day on which the magistrate ordered the person arrested to appear in person or by video for arraignment or an initial appearance before the court with jurisdiction over the most serious of the offenses for which the person was arrested.**

~~(b)~~

~~(i) If criminal charges have not been filed against the arrested person, the court may, for good cause and in writing, extend the jail release agreement or jail release court order beyond the time period under Subsection (3)(a) as provided in Subsection (3)(b)(ii).~~

~~(ii)~~

~~(A) The court may extend a jail release agreement or jail release court order under Subsection (3)(b)(i) to no longer than midnight of the third business day after the arrested person's first court appearance.~~

~~(B) If criminal charges are filed against the arrested person within the three business days under Subsection (3)(b)(ii)(A), the jail release agreement or the jail release court order continues in effect until the arrested person appears in person or by video at the arrested person's next scheduled court appearance.~~

~~(c) If criminal charges have been filed against the arrested person the court may, upon the request of the prosecutor or the victim or upon the court's own motion, issue a pretrial protective order.~~

~~(4) As a condition of release, the court may order the defendant to participate in an electronic or other monitoring program and to pay the costs associated with the program.~~

~~(5)~~

~~(6)~~

(a) Subsequent to an arrest for domestic violence, an alleged victim may waive in writing any or all of the release conditions described in Subsection (2) ~~(a) or (e)~~. Upon waiver, those release conditions do not apply to the alleged perpetrator.

(b) A court or magistrate may modify the release conditions described in Subsection (2) ~~(a) or (e)~~, in writing or on the record, and only for good cause shown.

~~(6)~~

~~(7)~~

(a) When a person is released pursuant to Subsection (2), the releasing agency shall notify the arresting law enforcement agency of the release, conditions of release, and any available information concerning the location of the victim. The arresting law enforcement agency shall then make a reasonable effort to notify the victim of that release.

(b)

(i) When a person is released pursuant to Subsection (2) based **upon a written** jail release agreement, the releasing agency shall transmit that information to the statewide domestic violence network described in Section 78B-7-113.

(ii) When a person is released pursuant to Subsection (2) ~~or~~, (3), **(4) or (5)** based upon a jail release court order or if a jail release agreement is modified pursuant to Subsection ~~(56)~~(b), the court shall transmit that order to the statewide domestic violence network described in Section 78B-7-113.

(iii) A copy of the jail release court order or written jail release agreement shall be given to the person by the releasing agency before the person is released.

(c) This Subsection ~~(67)~~ does not create or increase liability of a law enforcement officer or agency, and the good faith immunity provided by Section 77-36-8 is applicable.

**(8) The arresting officer shall ensure that the information presented to the magistrate includes whether the victim has waived the protections of this section pursuant to Subsection (6).**

~~(7)~~

~~(9)~~

(a) If a law enforcement officer has probable cause to believe that a person has violated a jail release court order or jail release agreement executed pursuant to Subsection (2-**5**), the officer shall, without a warrant, arrest the alleged violator.

(b) Any person who knowingly violates a jail release court order or jail release agreement executed pursuant to Subsection (2) is guilty as follows:

(i) if the original arrest was for a felony, an offense under this section is a third degree felony; or

(ii) if the original arrest was for a misdemeanor, an offense under this section is a class A misdemeanor.

(c) City attorneys may prosecute class A misdemeanor violations under this section.

~~(8)~~

**(10)** An individual who was originally arrested for a felony under this chapter and released pursuant to this section may subsequently be held without bail if there is substantial evidence to support a new felony charge against him.

~~(9)~~

**(11)** At the time an arrest for domestic violence is made, the arresting officer shall provide the alleged victim with written notice containing:

(a) the release conditions described in Subsection (2), and notice that those release conditions shall be ordered by a court or must be agreed to by the alleged perpetrator prior to release;

(b) notification of the penalties for violation of any jail release court order or any jail release agreement executed under Subsection (2);

(c) notification that the alleged perpetrator is to personally appear in court on the next day the court is open for business after the day of the arrest;

(d) the address of the appropriate court in the district or county in which the alleged victim resides;

(e) the availability and effect of any waiver of the release conditions; and

(f) information regarding the availability of and procedures for obtaining civil and criminal protective orders with or without the assistance of an attorney.

~~(10)~~

**(12)** At the time an arrest for domestic violence is made, the arresting officer shall provide the alleged perpetrator with written notice containing:

(a) notification that the alleged perpetrator may not contact the alleged victim before being released;

- (b) the release conditions described in Subsection (2) and notice that those release conditions shall be ordered by a court or shall be agreed to by the alleged perpetrator prior to release;
- (c) notification of the penalties for violation of any jail release court order or any written jail release agreement executed under Subsection (2); and
- (d) notification that the alleged perpetrator is to personally appear in court on the next day the court is open for business after the day of the arrest.

~~(11) —~~

~~(a) — If the alleged perpetrator fails to personally appear in court as scheduled, the jail release court order or jail release agreement does not expire and continues in effect until the alleged perpetrator makes the personal appearance in court as required by Section 77-36-2.6.~~

~~(b) — If, when the alleged perpetrator personally appears in court as required by Section 77-36-2.6, criminal charges have not been filed against the arrested person, the court may allow the jail release court order or jail release agreement to expire at midnight on the day of the court appearance or may extend it for good cause.~~

~~(12) — In addition to the provisions of Subsections (2) through (8), because of the unique and highly emotional nature of domestic violence crimes, the high recidivism rate of violent offenders, and the demonstrated increased risk of continued acts of violence subsequent to the release of an offender who has been arrested for domestic violence, it is the finding of the Legislature that domestic violence crimes, as defined in Section 77-36-1, are crimes for which bail may be denied if there is substantial evidence to support the charge, and if the court finds by clear and convincing evidence that the alleged perpetrator would constitute a substantial danger to an alleged victim of domestic violence if released on bail.~~

#### **77-36-5. Sentencing -- Restricting contact with victim -- Electronic monitoring -- Counseling -- Cost assessed against defendant -- Sentencing protective order.**

(1)

(a) When a defendant is found guilty of a crime involving domestic violence and a condition of the sentence restricts the defendant's contact with the victim, a sentencing protective order may be issued under Subsection 77-36-5.1(2) for the length of the defendant's probation.

(b)

(i) The sentencing protective order shall be in writing, and the prosecutor shall provide a certified copy of that order to the victim.

(ii) The court shall transmit the sentencing protective order to the statewide domestic violence network.

(c) Violation of a sentencing protective order issued pursuant to this Subsection (1) is a class A misdemeanor.

(2) In determining its sentence the court, in addition to penalties otherwise provided by law, may require the defendant to participate in an electronic or other type of monitoring program.

(3) The court may also require the defendant to pay all or part of the costs of counseling incurred by the victim and any children affected by or exposed to the domestic violence offense, as well as the costs for the defendant's own counseling.

(4) The court shall:

(a) assess against the defendant, as restitution, any costs for services or treatment provided to the victim and affected children of the victim or the defendant by the Division of Child and Family Services under Section 62A-4a-106; and

(b) order those costs to be paid directly to the division or its contracted provider.

(5) The court ~~shall~~ **may** order the defendant to obtain and satisfactorily complete treatment or therapy in a domestic violence treatment program, as defined in Section 62A-2-101, that is licensed by the Department of Human Services, ~~unless the court finds that there is no licensed program reasonably available or that the treatment or therapy is not necessary.~~